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FEB 02 2021

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION

In re: Verity Health System of California,
Inc., *et al.*,

Debtors and Debtors in Possession.

☒ Affects All Debtors

- ☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
☐ Affects O'Connor Hospital Foundation
☐ Affects Saint Louise Regional Hospital Foundation
☐ Affects St. Francis Medical Center of Lynwood Medical Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose Dialysis, LLC

Debtors and Debtors in Possession.

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

Jointly Administered With:

Case No. 2:18-bk-20162-ER;
Case No. 2:18-bk-20163-ER;
Case No. 2:18-bk-20164-ER;
Case No. 2:18-bk-20165-ER;
Case No. 2:18-bk-20167-ER;
Case No. 2:18-bk-20168-ER;
Case No. 2:18-bk-20169-ER;
Case No. 2:18-bk-20171-ER;
Case No. 2:18-bk-20172-ER;
Case No. 2:18-bk-20173-ER;
Case No. 2:18-bk-20175-ER;
Case No. 2:18-bk-20176-ER;
Case No. 2:18-bk-20178-ER;
Case No. 2:18-bk-20179-ER;
Case No. 2:18-bk-20180-ER;
Case No. 2:18-bk-20181-ER;

Chapter 11 Cases.

**ORDER VACATING HEARING ON
SMITH & NEPHEW'S MOTION FOR
EXPEDITED PAYMENT OF ITS
ORDINARY-COURSE ADMINISTRATIVE
CLAIM**

[RELATES TO DOC. NO. 6278]

VACATED HEARING DATE:

Date: February 3, 2021

Time: 10:00 a.m.

Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012



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On August 14, 2020, the Court entered an order confirming the *Modified Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) of the Debtors, the Committee, and the Prepetition Secured Creditors* [Doc. No. 5468, Ex. A] (the “Plan”). See Doc. No. 5504 (the “Confirmation Order”). The Plan creates a Liquidating Trust which is required to, among other things, “make the payments and distributions to Holders of Allowed Claims ... as required by the Plan.”¹ Howard Grobstein has been appointed as the Liquidating Trustee.

Under the Plan, holders of Administrative Claims² other than Professional Claims³ are paid solely from an Administrative Claims Reserve.⁴ If an Administrative Claim is “based on liabilities incurred by the Debtors in the ordinary course of their businesses after the Petition Date,” the Plan provides that the Liquidating Trustee shall pay the Administrative Claim “in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim”⁵

On December 21, 2020, the Liquidating Trustee filed a Status Report disclosing that the amount of ordinary-course Administrative Claims that had been submitted exceeded funds available in the Administrative Claims Reserve by approximately \$11 million.⁶ The Status Report further disclosed that based upon current projections, it appeared that ordinary course Administrative Claims could ultimately exceed the amount reserved for such claims by as much as \$26.5 million.⁷

Fearing that no funds would be available in the Administrative Claims Reserve to satisfy its ordinary-course Administrative Claim, Smith & Nephew, Inc. (“S&N”) filed and set for hearing

¹ Plan at § 6.2.

² The Plan defines an Administrative Claim as “a Request for Payment of an administrative expense of a kind specified in § 503(b) and entitled to priority pursuant to § 507(a)(2), including, but not limited to, the actual, necessary costs and expenses, incurred on or after the Petition Date, of preserving the Estates and operating the business of the Debtors, including wages, salaries, or commissions for services rendered after the commencement of the Chapter 11 Cases, Section 503(b)(9) Claims, and Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court (under § 546(c)(2)(A) or otherwise), but excluding Professional Claims, and Statutory Fees, which are separately defined below.” Plan at § 1.13.

³ The Plan defines a Professional Claim as “an administrative claim of a Professional for compensation for services rendered or reimbursement of costs, expenses, or other charges and disbursements incurred relating to services rendered or expenses incurred after the Petition Date and prior to and including the Effective Date.” Plan at § 1.141. Professional Claims are paid from the Effective Date Professional Claim Reserve, which is separate from the Administrative Claims Reserve. See Plan at § 7.9 (authorizing the Liquidating Trustee to establish the Administrative Claims Reserve and the Effective Date Professional Claim Reserve).

⁴ See Plan at § 15.3 (“No Holder of an Administrative Claim shall have recourse for any deficiency in the payment of its Administrative Claim against any of the Released Parties, the Post-Effective Date Debtors, the Post-Effective Date Board of Directors, the Liquidating Trustee, the Post-Effective Date Committee, or the Liquidating Trust.”).

⁵ Plan at § 2.1.

⁶ Doc. No. 6348 at 4.

⁷ *Id.*

a motion demanding immediate payment of its claim [Doc. No. 6278] (the “S&N Motion”). The Liquidating Trustee and the Post-Effective Date Debtors seek a continuance of the S&N Motion, asserting that the Liquidating Trustee requires additional time to analyze the ordinary-course Administrative Claims that have been filed.⁸ S&N contends that it would be substantially prejudiced by any continuance given the possibility that the Administrative Claims Reserve could soon be exhausted.⁹

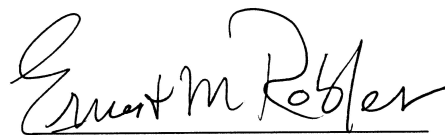
Based upon the foregoing, the Court **HEREBY FINDS AND ORDERS AS FOLLOWS:**

- 1) The S&N Motion, currently set to be heard on February 3, 2021, at 10:00 a.m., is taken off calendar. Under the Plan, holders of an ordinary-course Administrative Claim, such as S&N, are not required to take any action to receive payment on account of such claim. Instead, the Plan requires the Liquidating Trustee to pay such claims “in the ordinary course of business” without any oversight from the Court.¹⁰ Contrary to S&N’s contention, the fact that the Liquidating Trustee has not agreed to pay S&N’s claim until he has had the opportunity to analyze all other comparable ordinary-course Administrative Claims does not mean that the Liquidating Trustee has failed to fulfill his obligations under the Plan. Nothing in the Plan specifies precise deadlines for the payment of ordinary-course Administrative Claims, and the Liquidating Trustee’s request for “time to consider the S&N Claim in the context of all Administrative Claims, pursuant to the Plan, Confirmation Order, and Trust Agreement”¹¹ is entirely reasonable. S&N’s motion for expedited payment of its ordinary-course Administrative Claim is not consistent with § 2.1 of the Plan, which contemplates that ordinary-course Administrative Claims will be paid by the Liquidating Trustee without intervention by the Court.
- 2) The Court will not conduct a hearing on any motion seeking expedited payment of an ordinary-course Administrative Claim.

IT IS SO ORDERED.

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Date: February 2, 2021



Ernest M. Robles
United States Bankruptcy Judge

⁸ Doc. No. 6389.

⁹ Doc. No. 6398.

¹⁰ Plan at § 2.1.

¹¹ Doc. No. 6389 at 5.